

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 539 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT POLLUTION CONTROL BOARD

Versus

M/S DARSHAN TEXTILES

Appearance:

1. Criminal Revision Application No. 539 of 1993
MR BR GUPTA for Petitioner No. 1
MR HARESH J TRIVEDI for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
MR KV SHELAT for Respondent No. 1-3
MR HH PATEL, APP for Respondent No. 4
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/11/2002

ORAL JUDGEMENT

This Criminal Revision Application has been filed
by the petitioner-original complainant being aggrieved by

the order dated 28-9-1993 passed below application Ex.22 in Criminal Case No.1851 of 1991 by the learned Chief Metropolitan Magistrate, Ahmedabad, whereby the learned Magistrate had ordered for discharge of respondent Nos.1 to 3-original accused.

2. The short facts are that a complaint was filed by the present petitioner-original complainant in the Court of learned Chief Metropolitan Magistrate, Ahmedabad against the respondent Nos.1 to 3 for the offences under Secs.24, 25 and 26 punishable under Secs.43 and 44 read with Sec.47 of the Water (Prevention and Control of Pollution) Act, 1974 ('the Act' for short) and on receiving the same, it has been numbered as Criminal Case No.1851 of 1991 wherein process has been issued by the learned Magistrate against the respondent Nos.1 to 3 and same has been duly served and they appeared through advocate. Since the offence being a warrant triable case, complainant has examined Dahyabhai Kalubhai and Bhavdeep Rameshchandra Gajjar and submitted some documentary evidence on record. At the time of framing charge, an application Ex.22 was submitted by the respondent Nos.1 to 3. Said application has been decided by the Court below after giving opportunity of hearing to the parties vide order dated 28-9-1993 whereby the respondent Nos.1 to 3 were discharged against which, this revision application has been preferred by the original complainant.

3. Heard Mr.Haresh J. Trivedi, learned counsel for the petitioner, Mr.K.V.Shelat, learned counsel for the respondent Nos.1 to 3 and learned APP, Mr.H.H.Patel, for the respondent No.4-State.

4. Mr.Trivedi, learned counsel for the petitioner has mainly argued that the order passed by the Court below is on the basis of non-compliance of sec.21 of the Act. According to him, this point has been dealt with by this Court (Coram: D.H.Waghela, J.) while delivering a judgment on 28-8-2002 in Criminal Revision Application No.183 of 1992 wherein it has been held by this Court in para 4.1 as under:

"It is held by this Court in DAHYABHAI K. SOLANKI v. M/S KASHIRAM TEXTILES MILLS (PVT) LTD. & ORS. [1994(2) GLR 1166] that, for the purpose of Section 21(2) of the Act, there must be 'substantial compliance' of the provisions of sub-sections (3), (4) and (5) of Section 21 of the Act. In that view of the matter, the

interpretation and reasoning adopted by the trial Court to hold that the provisions of sub-section (5) of Section 21 were violated are erroneous and, therefore, that conclusion has to be set aside."

It has been held by this Court in the aforesaid judgment that there must be substantial compliance of the provisions of sub-sections (3), (4) and (5) of sec.21 of the Act and in that circumstances, interpretation and reasoning adopted by the trial Court to hold that provisions of sub-section (5) of Sec.21 were violated are erroneous. According to Mr.Trivedi, since the aforesaid judgment squarely covers the facts of the present case, same view may be taken in this matter also and order passed by the Court below may be quashed and set aside. It is also argued by him that there are ample evidence on record connecting the respondent Nos.1 to 3 with the offence in question and in this view of the matter, charge ought to have been framed by the court below against the respondent Nos.1 to 3 instead of discharging them at the initial stage. Mr.Trivedi has drawn my attention that all the procedure which has been done by Dahyabhai Kalubhai and Bhavdeep Rameshchandra Gajjar has been done in presence of responsible officer of the firm namely, Shri R.A.Patel. He has also drawn my attention towards other aspects of the matter and argued that all the requirements which are required to be followed at the time of taking the sample were followed by the concerned officers and, therefore, court below ought to have framed charge against the respondent Nos.1 to 3.

5. Whereas Mr.K.V.Shelat, learned counsel for the respondent Nos.1 to 3 has argued that no proper procedure has been followed by the officers while obtaining the sample in question.

6. Considering the submissions made on behalf of the parties and having regard to the facts and circumstances of the case, it appear that there is prima-facie evidence on record for framing the charge against the respondent Nos.1 to 3. Reliance is placed on the decision of this Court in the case of Dahyabhai Kalubhai Solanki Vs. M/s Kashiram Textiles Mills Pvt. Ltd. & Ors, 1994(2) G.L.R. 1166 more particularly towards head note which reads as under:

"Water (Prevention and Control of Pollution) Act,
1974 (VI of 1974)--Sec.21--Mandatory provisions
of the sub-sections are to be complied with--If
there is substantial compliance with the

provisions of sub-secs.(3),(4) and (5) the charge has to be framed."

6. Since the aforesaid judgment and judgment delivered by this Court in Criminal Revision Application No.183 of 1992 squarely cover the facts of this case and in view of the fact that the learned counsel for the parties requested not to pass any reasoned order as it may come in the way of the parties at the time of trial, I pass the following order:

7. This application is allowed. Order dated 28-9-1993 below application Ex.22 passed by the court below in Criminal Case No.1851 of 1991 is hereby quashed and set aside. Court below is directed to dispose of the Criminal Case expeditiously. Rule is made absolute accordingly.

(R.P.DHOLAKIA, J.)

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